

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the matter of

Implementation of the Satellite Home
Viewer Improvement Act of 1999

CS Docket No. 99-363

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**FURTHER COMMENTS OF
THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.**

The Association of Local Television Stations, Inc. ("ALTV"), submits these further comments in response to the Commission's *Notice of Proposed Rule Making* in the above captioned proceeding.¹ These further comments address sections III and V of the *Notice*. ALTV previously filed comments addressing section IV. In paragraph III of its *Notice* the Commission seeks comment on the appropriate retransmission consent election period for local television stations with respect to satellite carriers (and other MVPDs), the "consistent election requirement," and any other implementation issues arising from the recent amendments to Section 325(b)(3)(C)(i).

ALTV posits herein that Section 325(b)(3)(C) provides that the Commission adopt a common election cycle for local television stations' retransmission consent elections with respect to satellite carriers and cable systems. Some minor variations in the particular rules implementing the election cycle with respect to satellite carriers are necessitated by differences in effective dates and the differences between the cable must carry and satellite "carry one, carry all" provisions. Broadly

¹FCC 99-406 (released December 22, 1999)[hereinafter cited as *Notice*]. ALTV's interest in this proceeding was set forth in the comments filed in this proceeding by ALTV on January 12, 2000.

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speaking, however, the retransmission consent-must carry election cycle should be the same for cable and satellite. ALTV also submits that Section 325(b)(3)(C) neither requires nor even contemplates that a consistent election requirement apply in any way with respect to retransmission consent elections by local television stations with respect to satellite carriers. Therefore, local television stations ought remain free to make inconsistent elections among satellite carriers and between satellite carriers and cable systems.

1. The Statute Requires the Commission to Adopt the Same Election Cycle for Satellite and Cable Must Carry-Retransmission Consent Elections.

Section 325(b)(3)(C)(i) directs the Commission to adopt a common election cycle for local television stations' must carry-retransmission consent elections with respect to both satellite carriers and cable television systems. It provides expressly that the regulations to be adopted by the Commission to implement the SHVIA amendments to Section 325, "establish election time periods that correspond with those regulations adopted under subparagraph (B) of [paragraph (3)]."² Section 325(b)(3)(B) provided for a three year election cycle with respect to cable television.³ Pursuant to that statutory mandate, the Commission adopted current section 76.64(f), which established a three year election cycle.⁴ Local television stations were required to make an initial election on or before June 17, 1993, and subsequent elections by October 1, 1996, and every three years thereafter.⁵ The elections take effect on January 1 of the year succeeding the triennial October

²47 U.S.C. §325(b)(3)(C)(i).

³47 U.S.C. §325(b)(3)(B).

⁴47 CFR §76.64(f).

⁵47 CFR §76.64(f).

election.⁶ Thus, local television stations made elections by October 1, 1999, for the three year period beginning on January 1, 2000, and ending on December 31, 2002. The next election must be made by October 1, 2002, for the three year period beginning on January 1, 2003, and ending on December 31, 2005. A schedule or cycle which “corresponds” or coincides with the current cycle for cable television elections would follow the same schedule. Therefore, the Commission should adopt the same schedule for local television station elections with respect to satellite carriers, beginning with the October 1, 2002, election.

The Commission also must establish “an initial election period applicable only to satellite carriers.”⁷ This initial satellite-only election period is necessitated by the delayed effective date of the satellite “carry one, carry all” requirement -- January 1, 2002.⁸ Therefore, the one-year period, calendar year 2002, precedes the first full three-year election period commencing after the effective date of the “carry one, carry all” requirement. In order to synchronize the election dates and periods, ALTV recommends that the Commission establish an initial satellite carrier election deadline of October 1, 2001, which election would govern local-into-local retransmission of local television station signals during the one year initial period, consisting of calendar year 2002. Then, beginning with the election deadline of October 1, 2002, for the period beginning on January 1, 2003, and ending on December 31, 2005, local television stations would be making retransmission consent -must carry elections for cable and retransmission consent/carry one, carry all elections for satellite on the same election cycle.

⁶*Id.*

⁷*See Notice* at ¶13.

⁸47 U.S.C. §338(a)(3). Unlike the cable television must carry rules, which require that cable systems carry local signals in every market, the satellite “carry one, carry all” provision only applies where a satellite carrier carries at least one signal pursuant to the new local-into-local statutory copyright license. 47 U.S.C. §338(a)(1).

In markets where a satellite carrier has not elected to provide local-into-local service prior to the first election date (October 1, 2001), local television stations should not be required to make an election until initiation of local-into-local service is imminent. In markets where satellite carriers provide no local signals, no election is necessary. However, like new cable systems in a market, a satellite carrier which decides to provide local-into-local service in a new market should be required to provide prior notice to all local television stations in the market at least 60 days prior to commencing service.⁹ The notice would include the name and address of the person designated by the satellite carrier to receive elections from local television stations. Local television stations then would have to inform the satellite carrier of their election within 30 days of receiving notice. Carriage of all local stations electing “carry one, carry all” then would have to begin at the commencement of new local-into-local service.

ALTV also urges the Commission to require satellite carriers to notify all local television stations in markets where local-into-local service already has commenced on the effective date of the rules adopted in this proceeding that they are providing local-into-local service and advise them of the name and address of the person designated by the satellite carrier to receive retransmission consent/carry one, carry all elections from local stations. Some local television stations have had difficulty in determining where to send their elections for local cable systems. Because elections “default” to must carry, miscommunication may jeopardize timely retransmission consent negotiations, result in needless disputes and complaints, and create confusion and loss of service to consumers. This simple requirement will prevent needless delays in receipt of elections sent to satellite carriers by local stations and commensurate delays in initiation and completion of retransmission consent negotiations and/or commencement of carriage. It will facilitate prompt initiation of carriage to the benefit of the satellite carrier, the station, and the viewing public.

⁹See Section 76.64(l) of the Commission’s rules, 47 CFR §64(l).

In view of the above, the Commission should adopt regulations under which the election deadlines and periods for cable and satellite coincide (except for the initial one-year satellite election period necessary to conform the cycles). Furthermore, elections should be required initially only in markets where a satellite carrier either is providing local-into-local service or has notified local television stations of its intent to commence local-into-local service. This comports with the statutory directive in Section 325(b)(3)(B)(ii) and otherwise conforms the cable and satellite rules in a manner which reflects the technical and regulatory differences between the two MVPD services.

2. No Basis Exists for Expanding the Consistent Election Requirement to Satellite Carrier Elections.

Section 325, as amended by SHVIA, neither requires nor contemplates the Commission's expanding the consistent election requirement to satellite carriers as well as cable systems. In the 1992 Cable Act, Congress expressly required the Commission to adopt rules requiring consistent elections with respect to cable systems serving the same geographic area¹⁰. The Commission did so.¹¹ However, in delegating to the Commission the authority and obligation to adopt rules implementing the SHVIA retransmission consent provisions, Congress declined to include the consistent election requirement in the parallel satellite provision, as it had in the cable provision.¹² Furthermore, whereas Congress did direct the Commission to establish corresponding election time periods, it did not impose any consistent election requirement. Instead, Congress mandated a different approach. It required the FCC to adopt rules prohibiting local television stations from

¹⁰47 U.S.C. §325(b)(3)(B).

¹¹*Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965 (1993)[subsequent history omitted].

¹²Congress was very aware that it was adopting a regulatory scheme for a very different industries. As stated in the Joint Explanatory Statement of the Committee of Conference (at 2), "[T]he practical differences between the two industries must be recognized and accounted for."

engaging in exclusive agreements or failing to negotiate in good faith. Therefore, the statute provides no basis for adoption of a consistent election requirement with satellite carriers.

ALTV further submits that the consistent election requirement would be as out of place technically and practically as it is legally under the statute. First, no consistent election as between a satellite carrier and local cable systems would be possible where a local television station had elected must carry for some cable systems and retransmission consent for other systems in the same market. Satellite carriers' footprints currently cover broad regions, if not the entire continental United States. In any event, their footprints would cover the entire local market. In contrast, cable systems provide service in discrete areas within the local market. Second, until 2002, no consistent election is possible where a station has elected must carry on some or all of the cable systems in a market. Until 2002, all local carriage of local television station signals will be pursuant to retransmission consent.¹³ Third, even assuming a consistent election were possible, such a requirement would pre-ordain the first satellite election prior to 2002. As noted above, the first two years of the current cable election period will elapse before the first satellite election would take effect. Local stations, regardless of changes in circumstances, would be saddled with their cable elections under a requirement that their satellite elections be consistent with the cable elections. Fourth, satellite carriers hardly represent the sort of high risk, upstart "overbuilder" ventures which were protected by the cable consistent election requirement. They are multibillion firms with rapidly growing market shares. Indeed, they perceive their position to be so strong that they are charging extra for local signals, rather than including them in their base level of service.¹⁴

¹³The "carry one, carry all requirement does not go into effect until January 1, 2002. 47 U.S.C. §338(a)(3).

¹⁴See Comments of the Association of Local Television Stations, Inc., CS Docket No. 99-363 (filed January 12, 2000) at 6.

No reason exists to require consistent elections between or among satellite providers. They are in no need of protection from themselves. They are not start-up operations, but strong, competitive firms, which have consolidated and survived the weeding out phase of DBS. They were successful before local-into-local, and themselves anticipate that they will be more successful once they begin to offer local signals.

Finally, with respect to a consistent elections requirement, the Commission should be reticent to adopt requirements which undermine local television stations' ability to cope with the ever expanding array of competitive services. This is particularly true where local television stations and the copyright owners of their programming already subsidize both cable systems and satellite carriers via a statutory license. The retransmission consent provision was adopted to ameliorate this subsidization by enabling local television stations to gain some compensation for use of their signals.¹⁵ Why did Congress wish to counteract this ongoing subsidization? Congress sought to preserve the benefits of free, ubiquitous, universal local broadcast television service for the public by opening an avenue of economic recompense to stations from those firms which use the signals of local television stations to enhance their service and increase their profits.¹⁶ A consistent election requirement would confound operation of the retransmission consent requirement by further encumbering local television stations' ability to negotiate effectively and secure fair compensation for use of their signals.

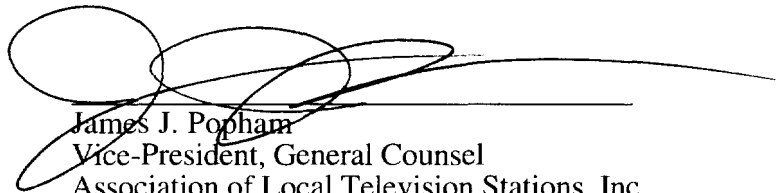
In sum, Congress saw reason to saddle local television stations with a consistent election requirement *vis-a-vis* satellite carriers. No reason exists for the Commission to do so either. The Commission should do no more than follow the statutory dictate to adopt rules implementing a

¹⁵*Id.* at 4-6.

¹⁶*Id.*

corresponding election cycle for cable and satellite carrier elections, modified as necessary to reflect the minor differences between the two services and the laws governing each.

Respectfully submitted,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

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